

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCELLO WILLIAM LESTER,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS,

Respondent.

Case No. 2:21-cv-01367-JDP (HC)

ORDER:

(1) GRANTING PETITIONER'S
APPLICATION TO PROCEED *IN FORMA
PAUPERIS*;

(2) FINDING THAT THE PETITION DOES
NOT STATE A COGNIZABLE CLAIM AND
GRANTING LEAVE TO AMEND WITHIN
SIXTY DAYS

ECF Nos. 1 & 6

Petitioner, proceeding without counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2254. After reviewing the petition, I find that the petition cannot proceed because petitioner is not alleging that his conviction is invalid. Rather, he is alleging that his conditions of confinement pose a risk to his health.

The amended petition is before me for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine the habeas petition and order a response unless it "plainly appears" that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

1 Petitioner argues that his current conditions of confinement put him at a heightened risk of
2 contracting Covid-19. ECF No. 1 at 3. He argues that he should be considered for early release
3 because of those conditions. *Id.* at 7. This claim is unsuited to a section 2254 petition because it
4 does not attack the validity of his conviction. *See Muhammad v. Close*, 540 U.S. 749, 750 (2004)
5 (“Challenges to the validity of any confinement or to particulars affecting its duration are the
6 province of habeas corpus, requests for relief turning on circumstances of confinement may be
7 presented in a § 1983 action.”) (internal citations omitted). Courts considering similar claims
8 have found that they are more appropriately raised in a section 1983 action. *See Bowman v.*
9 *California*, No. EDCV 19-00184 RGK (RAO), 2019 WL 4740538, at *1-2 (C.D. Cal. June 26,
10 2019); *Macias v. Bradley*, No. CV 20-7114-RGK (PLA), 2020 WL 6681250, at *3 (C.D. Cal.
11 Nov. 10, 2020). Remedyng petitioner’s allegedly deficient conditions of confinement does not
12 necessarily require his release.

13 I will give petitioner leave to amend so that he may explain why this habeas action should
14 proceed. He may also choose to convert this case into a section 1983 civil rights action.

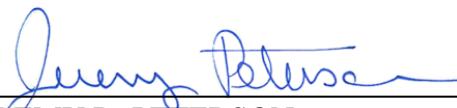
15 1. Petitioner’s application to proceed *in forma pauperis*, ECF No. 6, is granted.

16 2. Petitioner may file an amended petition within sixty days of this order’s entry. If
17 he does not, I will recommend that the current petition be dismissed for the reasons stated in this
18 order.

19 3. The Clerk of Court is directed to send petitioner a federal habeas form.

20 IT IS SO ORDERED.

22 Dated: October 28, 2021


23 JEREMY D. PETERSON
24 UNITED STATES MAGISTRATE JUDGE

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